

# *The* CORPORATION JOURNAL

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## NEW WYOMING CORPORATION LAW

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# *The* CORPORATION JOURNAL

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The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.

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## NEW WYOMING CORPORATION LAW

A NEW Wyoming Corporation Law, to be known as the Wyoming Business Corporation Act, has been enacted by Chapter 85, Laws of 1961. Approved February 14, 1961, it becomes effective July 1 of this year, with provisions applicable to both domestic and foreign corporations. The new law is based on the Model Business Corporation Act prepared by the Committee on Corporate Laws of the American Bar Association.

All corporations, both domestic and foreign, will become subject to the new law on July 1, without any affirmative action on their part. The designations of resident office and resident agent under the old law will be valid designations for the purposes of the new law which requires both domestic and foreign corporations to designate a registered office and registered agent.

Although no action will be required of corporations to adopt the law, it should be noted that the duration of each domestic corporation is automatically made perpetual unless the directors adopt a resolution reaffirming the provision for limited duration in the articles of incorporation. A certified copy of this resolution must be filed with the Secretary of State within 120 days after July 1, 1961.

Perhaps the one most important change brought about by the new law is the provision allowing corporations to organize for more than one purpose. Under the old law, both by constitutional and legislative prohibition, a Wyoming corporation could have only one purpose. These restrictions have been removed by constitutional amendment and by the new Business Corporation Act.

Many other significant changes have been brought about by the new law. Among the new provisions dealing with

incorporation which have no counterpart in the old law are those requiring that at least \$500 of capital be paid in before a corporation may transact business, that corporate names may not be the same as, or deceptively similar to, the name of any other domestic or licensed foreign corporation, and providing that an available corporate name may be reserved for 120 days. In practice, the Secretary of State did not permit the use of deceptively similar names prior to the new law.

Entirely new provisions dealing with authorized shares include provisions permitting the issuance of shares in series, making the judgment of directors or shareholders conclusive as to the value of consideration received, for an allocation of consideration received between capital and surplus, and providing for the convertibility of stock or securities from one class into another. The new statute authorizes the issuance of rights or options entitling the holders to purchase shares of any class or classes. The preemptive right of shareholders to acquire unissued shares may be limited or denied, but each stock certificate issued must set forth, or state that the corporation will furnish, a full statement of the designations, preferences, limitations and relative rights of each class.

New provisions sanction the payment of stock dividends, a practice already recognized by the Wyoming courts. The payment of dividends out of depletion reserves is authorized in the case of corporations exploiting natural resources.

Substantial changes have been made in the area of corporate powers. The board of directors is specifically empowered to dispose of all the property of a corporation in the regular course of business. Corporations are authorized to purchase and hold their own shares and shares of

other corporations, indemnify directors, make charitable contributions, and establish pension plans. Under the new law, action may be taken without a meeting if a consent in writing is signed by all the directors or shareholders entitled to vote. In addition, the new law sanctions the closing of the transfer books, and has placed a limitation on the duration of proxies.

Directors, who were required to be shareholders under the old law, need not be either residents or shareholders under the new law; executive committees are specifically authorized; and directors will not be liable for improper dividends when they have relied in good faith upon the financial statements of the corporation. Where the shares of a corporation are owned beneficially and of record by 1 or 2 shareholders, the number of directors may be less than 3 but not less than the number of shareholders. It is specifically provided that vacancies on the board may be filled by a majority of the remaining directors; the old law merely provided that vacancies could be filled as provided in the by-laws.

Voting trusts are authorized, not to exceed 10 years duration. The incorporators may authorize dissolution within 2 years after incorporation and before commencing business or issuing shares.

The provisions of the new Wyoming Business Corporation Act dealing with foreign corporations reflect the pattern of the Bar Association's Model Act. No foreign corporation transacting business in Wyoming without a certificate of authority, or its successors or assignees, will be permitted to maintain any action, suit or proceeding in any court of the state, until the corporation has obtained such a certificate. This represents a softening of the former strict provision that such a foreign corporation could not enforce contracts, made before qualification, even after subsequent qualification.

The new law specifically provides that the failure to obtain a certificate of authority "shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State."

An entirely new fee schedule has been prescribed. The fees for filing articles of incorporation are based on the aggregate par value of the authorized shares. Shares without par value are valued at one dollar per share for this purpose. If the aggregate par value is under \$50,000 the fee is \$27.50; if the aggregate par value is \$50,000 to \$100,000 the fee is \$52.50; and if the aggregate par value is over \$100,000 the fee is \$52.50 for the first \$100,000 and 30¢ for each additional \$1,000.

Recognizing the constitutional problem, the legislative draftsmen have provided that qualification will be required of foreign corporations engaged in commerce with foreign nations and among the several states "only in so far as the same may be permitted under the provisions of the Constitution of the United States." The new law does not contain, however, the list of specific activities not constituting "doing business" which is contained in the Model Business Corporation Act.

The new law has eliminated all filings with the Register of Deeds. Upon any supplemental filing after July 1, 1961, it will only be necessary to file with the Secretary of State. There is a new provision requiring the filing of an application for an amended certificate of authority in the event that the corporation changes its name or desires to pursue in Wyoming different or additional purposes than those set forth in its application for license. The effect of this provision on corporations qualified under the old law, which did not require the corporation to set forth its purposes, has yet to be determined.

Wyoming and Utah, the latter's new corporation law effective January 1, 1962, have followed eight other states and the District of Columbia in basing their new corporation laws on the Model Business Corporation Act of the American Bar Association. Since 1951, Alaska, Colorado, the District of Columbia, Iowa, North Dakota, Oregon, Texas, Virginia and Wisconsin have adopted new corporation laws based substantially on the provisions of the Model Act. Alabama,

Connecticut, Maryland, New York and North Carolina have also enacted new corporation laws. The New York Business Corporation Law will be effective April 1, 1963. All of these latter statutes reflect, to a greater or lesser extent, the influence of the Model Act. Significant changes brought about by the new laws in New York and Utah will be discussed in forthcoming issues of THE CORPORATION JOURNAL.



## domestic corporations

### DELAWARE

**Director's right to inspect corporate books held not absolute and director would be denied inspection where his motives were improper.**

This was an action by a director for access to the corporate stock ledger. The corporation refused his demand, averring in its answer that his motive was improper and that such inspection would result in a detriment to the corporation. The question presented, in the words of the court, was "whether or not a showing of an improper motive on the part of a director is sufficient in law to deny to him the right to inspect the corporate stock ledger."

The Superior Court of Delaware, New Castle County, observed that "the right of a director to examine corporate records springs from his duty to protect and preserve the corporation. He is a representative of all of the stockholders.

Because of his fiduciary relationship to the corporation, he must maintain a high standard of loyalty to the corporation, but when he acts hostile to the corporate interests, when his motives are improper, then it must be said that he no longer is performing his corporate duties. Once he ceases to perform his corporate duties, his right to inspect the books of the corporation should immediately end." The director's motion to strike the corporation's answer as insufficient was denied.

*State v. Seiberling Rubber Co.*, 168 A. 2d 310. Ernest S. Wilson, Jr., of Wilmington, for plaintiff. John P. Sinclair, of Berl, Potter & Anderson, of Wilmington, for defendant.

**Delaware Supreme Court affirms decision holding corporation a bona fide purchaser for value of stock where investigation would not have revealed infirmity in title of pledgor.**

Plaintiff, a California banking corporation, filed suit to compel defendant Delaware corporation to issue to it a

certificate evidencing its ownership of 32,000 shares of defendant's stock. These shares had been pledged to plaintiff as

security for a loan, and plaintiff acquired them by foreclosure of the pledge. Plaintiff knew at the time of the loan that the pledgor had a criminal record. Defendant alleged that the shares had been issued to the pledgor without consideration, and that plaintiff's knowledge of the pledgor's criminal record denied it the status of a bona fide purchaser for value.

The Supreme Court of Delaware, affirming the Court of Chancery (The Corporation Journal, December 1960—January 1961, page 47), observed that the fact of the pledgor's conviction "was wholly unrelated to the alleged invalidity of the shares." However, even if that

fact were sufficient to require plaintiff to make further inquiry, the court concluded that such further inquiry at the time of the loan "would have disclosed nothing indicating invalidity," since at the time of the loan no challenge to the validity of the pledgor's shares had yet been made. The Chancellor's finding that plaintiff was a bona fide purchaser for value was sustained, and the judgment affirmed.

*Twinlock, Inc. v. Continental Thrift, Inc.*, 167 A. 2d 735. Ernest S. Wilson, Jr., of Norford, Young & Conaway, of Wilmington, for appellant. Louis J. Finger of Richards, Layton & Finger, of Wilmington, for appellee.

## NEW YORK

### Right of director to inspect books and records of corporation held absolute and unqualified.

This was a motion for inspection of the corporate records. Petitioner was a director of the corporation. The New York Supreme Court, Special Term, New York County, Part I, concluded that petitioner's right as a director to inspect the corporate books and records was

"absolute and unqualified." The motion for inspection was granted.

*Application of Goldman*, 207 N.Y.S. 2d 309. Solomon Kaufman for petitioner. Gerald Orseck (Sidney Orseck, of counsel), for respondents.



## foreign corporations

### ARKANSAS

Unlicensed foreign corporation held not subject to service of process where its activities were essentially interstate, its sales in Arkansas were a very minor fraction of its total volume, and the claim grew out of an extrastate transaction.

This was a personal injury suit, based on diversity of citizenship, filed by an Arkansas citizen against three foreign corporations to recover for injuries sustained as a result of a pipeline explosion in Kentucky. One of the corporate defendants filed a third-party complaint

against the unlicensed foreign corporation which manufactured the valve which allegedly was the cause, in part, of the explosion. The unlicensed foreign corporation, the third-party defendant, moved to dismiss the third-party complaint on the ground of lack of jurisdiction.

After an extensive analysis of the activities of the unlicensed foreign corporation, the United States District Court, W. D. Arkansas, felt that the corporation's Arkansas operations were "properly characterized essentially as interstate sales of manufactured products based upon solicitations made in Arkansas, the sales and solicitations being accompanied by incidental promotional, service, and repair activities." The court pointed out that the corporation's sales in 1959 amounted to about \$500,000, representing only 6/10ths of one per cent of total volume, "a very minor fraction." The court concluded that "had the valve involved in this case been manufactured or sold in Arkansas, or had the explosion of the pipeline occurred here, the Court might be able to say, as a matter of Arkansas law, that jurisdiction . . . exists. But, in the circumstances here present and in view of Arkansas'

apparent hesitancy to assert jurisdiction over foreign corporations to its fullest permissible extent, the Court is unwilling to say that the Supreme Court of Arkansas would hold that" the pertinent Arkansas statute confers jurisdiction on a claim against an unlicensed foreign corporation growing out of an extrastate transaction. The motion of the third-party defendant to dismiss the third-party complaint was granted and the complaint dismissed.

*McAvoy v. Texas Eastern Transmission Corporation*, CCH, ARKANSAS TAX REPORTS ¶ 4-008, 185 F. Supp. 784. McMath, Leatherman, Woods & Youngdahl, of Little Rock, for plaintiff. Mehaffy, Smith & Williams, Wright, Harrison, Lindsey & Upton, of Little Rock, Shackleford & Shackleford, of El Dorado, Arkansas, for defendants. Spencer & Spencer, of El Dorado, Arkansas, for Intervenor.

## MICHIGAN

**Unclaimed stock and dividends of qualified foreign corporation owned by nonresidents held to escheat to the state where the greater part of the corporation's assets and business operations were in the state.**

One of the questions in this action concerned the right of the State of Michigan, under the provisions of the Michigan Code of Escheats, P. A. 1947, No. 329, to unclaimed stock and dividends of defendant foreign corporation belonging to nonresidents. Defendant was a qualified foreign corporation. The greater part of its assets were located in Michigan, as well as stock records and a stock transfer agent.

The Michigan Supreme Court adverted to the general rule that the place of domicile of the owner determines the situs of personal property in the absence of statutory provision to the contrary. The court observed, however, that a

1955 amendment to the code of escheats provided that where the physical situs of such property was within Michigan, the property was deemed abandoned and was to be reported by the holder, "without regard to the last known address of the owners."

After an examination of pertinent decisions of the Supreme Court of the United States and other courts, the Michigan court concluded: "Under the general principles recognized and applied in the foregoing decisions, and in other cases of like nature, we think that appellant's claim that the situs of the property involved in the suit may not be said to be within the State of Michigan is without

merit. This is the State in which the greater portion of defendant's property is located, and in which its major business operations are conducted. It has acquired here a business or commercial domicile of the character mentioned by Chief Justice Hughes in *Wheeling Steel Corp. v. Fox*, *supra*. It is amenable to the service of process in Michigan and, in consequence, the property rights involved may be reached and subjected to the jurisdiction of the State courts. The rights of appellant as well as of the owners of the property involved, whether the original owners or others claiming under them, are fully protected. We are concerned with the matter of custody of these intangible assets, and no one is in

position to complain if such custody is taken from the appellant and reposed in the State. No claim is made that the stock and the dividends thereon involved in the suit may rightfully be claimed by the corporation."

*Schoener v. Continental Motors Corporation*, 106 N. W. 2d 774. Butzel, Eaman, Long, Gust & Kennedy, A. Hilliard Williams, James D. Ritchie (of Detroit), Joseph T. Riley (of Muskegon), for defendant-appellant Continental Motors Corporation. Paul L. Adams, Atty. Gen., Samuel J. Torina, Sol. Gen. (of Lansing), Irving B. Feldman, Asst. Atty. Gen. and State Public Administrator (of Detroit), James F. Schoener (of Muskegon), for plaintiff-appellee.

## MINNESOTA

**Unlicensed foreign corporations held subject to service of process by service on the Secretary of State where the foreign corporations enjoyed benefits of laws of Minnesota and actions grew out of relationships created in Minnesota.**

Plaintiff, a Minnesota corporation engaged in the manufacture and sale of hearing aids, brought these actions to recover on promissory notes made by the defendant unlicensed foreign corporations. Defendants were engaged in the sale of hearing aids outside Minnesota. Service was made in each case by service on the Secretary of State pursuant to Minn. St. 303.13, which provides for such service if a foreign corporation makes a contract with a resident to be performed in whole or in part in Minnesota, and the action arises out of such contract.

One of the defendants entered into two contracts with the plaintiff in Minnesota. The plaintiff filled the orders of the defendant corporations at its plant in Minneapolis, and the goods were delivered to the defendants f.o.b. that plant. The president of each of the defendants was the same person, and he attended sales meetings and conferences at the offices of the plaintiff company at Min-

neapolis during which business policies, plans, and procedures were discussed and agreed upon. The promissory notes in question were executed by the defendants at plaintiff's Minneapolis office, were delivered in Minneapolis and were payable there. Defendants had no assets, offices or places of business in Minnesota.

The Supreme Court of Minnesota, citing the leading United States Supreme Court decision on the question, *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, concluded that defendants had sufficient contacts with the state to be subject to service of process. "It is apparent from the facts stated that the Oregon defendants have enjoyed the benefits of the laws of this state and that they have had access to our courts to enforce any rights in regard to the transactions involved. Moreover, the actions grew directly out of the relationships of the parties created in this state.

In considering the factors bearing on traditional notions of fair play and substantial justice, it seems clear that the defendant's burden of defending in Minnesota is no greater than would be the plaintiff's burden of suing in the State of Oregon." The order of the District Court denying defendants' motion to dismiss was affirmed.

*Dahlberg Co. v. Western Hearing Aid Center, Ltd.*, 107 N. W. 2d 381. Joseph Robbie and Denver Kaufman, Jerome Fitzgerald, of Minneapolis, for appellants. Levitt Palmer & Rogers, John Palmer, of Minneapolis, for respondents. (*Petition for writ of certiorari filed in the United States Supreme Court, April 27, 1961; Docket No. 931.*) (See page 116.)

## MONTANA

### Unlicensed foreign corporation held not barred from enforcing contract where its activities with respect to Montana were exclusively in interstate commerce.

One of the issues raised on this appeal was whether plaintiff unlicensed foreign corporation was doing business in Montana so as to be barred from enforcing its contract with defendant by Section 15-1703, R.C.M. 1947. That section provides that no domestic contracts entered into by a foreign corporation while doing business in Montana may be enforced until the corporation has qualified. The operation of plaintiff included the solicitation of Montana customers by mail, sending salesmen to prospective Montana customers, acceptance in the state of incorporation of the contracts for the sale of advertising space, performance of the contracts in the state of incorporation, and payment outside Montana. All offices and employees were maintained in the state of incorporation.

The Supreme Court of Montana concluded that "these activities which result in contractual obligations between citizens of different states constitute interstate commerce." Since it was engaged in interstate commerce with respect to Montana, plaintiff was not barred by Section 15-1703 from enforcing its contract. On this and other grounds, the judgment for defendants was reversed and the cause remanded for a new trial.

*Union Interchange, Inc. v. Parker*, 357 P. 2d 339. (Discussed in CCH CORPORATION LAW GUIDE ¶9625.) Ernest F. Boschert, of Billings, Alvin G. Greenwald, of Los Angeles, for appellant. F. N. Hamman, J. A. Turnage, of Polson, for respondents.

## NEW YORK

### Assignee of unlicensed foreign financing corporation held not barred from enforcing assigned notes where essential elements of original transaction took place outside New York.

Plaintiff, assignee of an unlicensed foreign financing corporation, brought this action on sixteen promissory notes against the defendant. The plaintiff's assignor was a Delaware corporation with its home office in Chicago, and was in the business of financing dealer purchasers of another corporation's products. In order to enable defendant to purchase

the products of the other corporation, the foreign corporation had entered into an arrangement with defendant and with a New York wholesaler. The financing took the following form: Defendant signed an "authorization for signature to Expedite Wholesale Financing," a "Statement of Trust Receipt Financing," and a "Dealer application and statement."

## WONDER ARM—

Wouldn't it be wonderful to be a lawyer with a wonder arm which could, as desired, reach any distant office? Suppose, as just one example, you had to qualify your client as a foreign corporation in an out-of-state . . .

The state "next door"? Put out your arm the way you would for ten, or more required. A state 1000 or 2000 miles away? Just put out your arm. You could go through statute books, make notes about the costs, qualification procedures, annual tax requirements. You could select the forms you need, fill them out, hand them to your client for signatures, then hand them to the proper state official (or officials), get receipts—then lean back and write a bill to your client for services rendered.

You almost can! When you have a qualification order

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...ationder arm.



The foreign financing corporation accepted the arrangement at its Chicago office. Thereafter, the wholesaler shipped to the defendant, and the foreign financing corporation paid the wholesaler. Later when the defendant was unable to pay for his purchases, the financing corporation, pursuant to the "authorization for signature," had one of its employees in Chicago sign the notes sued upon on defendant's behalf for the purpose of suit.

The defendant moved to dismiss the complaints on the ground that the foreign financing corporation was doing business in New York without having qualified, and that therefore the suit was barred by Section 218 of the General Corporation Law. Section 218 bars an unlicensed foreign corporation doing business and its successors in title from maintaining any action in New York on any contract

made by it in the State unless it had first obtained a certificate of authority.

The Supreme Court, Onondaga County, noting that the financing corporation had no office for the transaction of business in New York and that its arrangements "in essence always were made through its Chicago office," concluded that it was not doing business in New York. In addition, the court was of the opinion that "the essential elements in the transaction, acceptance of the papers signed by the defendant and signing of the notes, all took place without the State of New York." The motion to dismiss the complaints was denied.

*Samuels v. Mott*, 211 N. Y. S. 2d 242. Smith & Sovik, of Syracuse, for plaintiff. Hancock, Dorris, Ryan & Shove (Philip T. Seymour, Robert A. Small, of counsel), of Syracuse, for defendant.

## PENNSYLVANIA

**Service of process on foreign corporation held invalid where service was made upon telephone switchboard operator at office of answering service used by corporation.**

One of the issues raised here was whether or not the office of the telephone answering service used by defendant foreign corporation was the defendant's office or usual place of business. Service had been made on a telephone switchboard operator at the office of the answering service in accordance with Pennsylvania Rule of Civil Procedure 2180 (a) (2), 12 P. S. Appendix, permitting service on a corporation by handing process "to an agent or person for the time being in charge of, and only at, any office or usual place of business of the corporation." The defendant foreign corporation represented itself to have an office there, both by listing in the telephone directories and on the building directory and by personally informing the plaintiff of the existence of such office. The defendant did in fact receive orders and correspondence at the

address of the answering service both by mail and by telephone. The office was not occupied by the defendant, but only by the answering service whose services were shared by over 100 subscribers. The persons working in the office were employees of the answering service and had no authority to act for the defendant.

The United States District Court, E. D. Pennsylvania, concluded that on these facts the answering service office could not be considered an office or usual place of business of defendant.

*Paramount Packaging Corp. v. H. B. Fuller Co. of N. J.*, 190 F. Supp. 178. Milford J. Meyer, Meyer, Lasch, Hankin & Poul, of Philadelphia, for plaintiff. Sidney L. Wickenhaver, Montgomery, McCracken, Walker & Rhoades, of Philadelphia, for defendant.

## SOUTH CAROLINA

**Unlicensed foreign dredging corporation held subject to service of process where its activities in the state, confined to Savannah River dividing South Carolina and Georgia, were continuous and extensive.**

Plaintiffs brought actions against defendant unlicensed foreign corporation for injuries allegedly sustained as a result of the negligent operation of defendant's dredging equipment on the Savannah River. Defendant moved to set aside the attempted service of the summons in each of the actions and, since service had been attempted in both actions by service on the Secretary of State of South Carolina and on an employee of defendant, the motions were argued together.

Defendant, under a contract with the United States Corps of Army Engineers, was engaged in dredging operations on the Savannah River. The crews, none of whom came from South Carolina, were lodged and took their meals on the Georgia side of the river. Supplies and equipment were all procured from Georgia and Florida. Defendant had no office in South Carolina, owned no property there and never maintained any facilities there. The only connection defendant had with South Carolina was the dredging operation in the Savannah River.

The Supreme Court of South Carolina, concluding that defendant's activities within the state were sufficient to subject

it to service of process, pointed out that defendant's operations "extended over a continuous period of more than ten months and over an area of one hundred and forty-two miles of the Savannah River, the middle of which . . . is the boundary between South Carolina and Georgia. Those operations were such as were normally incident to the defendant's business; they were conducted, of necessity, sometimes in Georgia and sometimes in South Carolina; they required dredging on both sides of the boundary; they required cutting of banks on both sides of the river to make a new channel. In the present state of the record it appears uncontroverted that the accident from which this action resulted occurred in the course of those operations . . ." The services on the Secretary of State of South Carolina were sustained and the decision of the lower court setting aside the services was reversed.

*Boney v. Trans-State Dredging Co.*, 115 S. E. 2d 508. Murdaugh, Eltzroth & Peters, of Hampton, for appellant. W. L. Rhodes, Jr., of Hampton, Blatt & Fales, Barnwell, Lawton, O'Donnell & Sipple, of Savannah, Ga., for respondent.

**Unlicensed foreign corporation held subject to service of process by service on Secretary of State where it made contract involving valuable consideration with domestic corporation.**

Defendant unlicensed foreign corporation moved to quash the purported service and dismiss the complaint against it for lack of jurisdiction. Defendant had its principal place of business outside the state, and employed a sales agent to solicit orders on its behalf in South Carolina. The merchandise accused as an infringe-

ment of certain Letters Patent was sold by defendant to its co-defendant, a South Carolina corporation, on an order taken within South Carolina by the sales agent. The merchandise was shipped from outside the state to the purchaser in South Carolina. Service on defendant was attempted by service on the Secretary of State of South Carolina.

The United States District Court, W. D. South Carolina, Spartanburg Division, noted that by virtue of Section 12-703, South Carolina Code, a foreign corporation receiving valuable consideration under a contract made with a South Carolina corporation is doing business in the state. The court concluded that since it was doing business in the state, the defendant was subject to service of process. Having failed to qualify, the defendant was "deemed to have desig-

nated the Secretary of State as its lawful agent for service." The motion to quash and dismissal was denied.

*Thiel v. Electric Sales & Supply Co.*, 187 F. Supp. 640. (Discussed in CCH CORPORATION LAW GUIDE ¶9563.) Holcombe & Bomar, of Spartanburg, S. C., Alfred W. Petchaft, of St. Louis, Mo. for plaintiff. L. Paul Barnes, of Spartanburg, Mann, Brown & McWilliams, of Chicago, Ill., for defendant Holub Industries, Inc.



## taxation

### ALASKA


#### Occupation license tax on freezer ships upheld by Supreme Court of United States.

Alaska imposed a license tax on any "person, firm or corporation prosecuting or attempting to prosecute . . . lines of business in connection with Alaska's commercial fisheries." The tax on "freezer ships and other floating cold storages" was 4% of the value of the raw fish obtained for processing through freezing. Taxpayers, one of which was a foreign corporation and the rest partnerships, used freezer ships for the taking and preservation of salmon along Alaska's shores. The freezer ships used "catcher boats" which taxpayers either owned, or had under contract. In addition, the freezer ships sometimes purchased salmon from independent fishermen. The freezer ships sometimes anchored outside Alaska's territorial waters, and served as a base for their catcher boats which fished within the territorial waters. At other times the freezer ships were within Alaska's waters. Frozen fish were transported in interstate commerce to canneries in the state of Washington.

The United States Supreme Court, reversing the decision of the Ninth Circuit Court of Appeals (The Corporation

Journal, December 1960—January 1961, page 54), held that the taxable event was the prosecuting of the business of freezer ships and not the mere freezing of the fish. "These ships do more than freeze fish and transport them interstate. Taking the fish directly through their own catcher boats or obtaining them from other fishermen is also a part of respondents' business. Without the taking or obtaining of the fish, the freezer ship would have no function to perform." Since some of the fish were taken in Alaska's territorial waters, the court concluded that taxpayers were engaged in business in Alaska and subject to the license tax. Since the court did not know how many fish, if any, were obtained outside Alaska's territorial waters, the cause was remanded to the Court of Appeals for proceeding in conformity with the opinion.

*Alaska v. Arctic Maid*, CCH ALASKA TAX REPORTS ¶200-057, United States Supreme Court, May 1, 1961; Docket No. 106. Attorney for petitioner: Ralph E. Moody, Attorney General of Alaska. (See page 116.)



# state legislation

## Withholding at the Source

**Alaska** — The rate of the withholding tax has been increased to 16% of the Federal tax by Chapter 55 of 1961, effective from July 8, 1961.

**Minnesota** — Commencing with wages paid on or after January 1, 1962, employers will be required to deduct and withhold the state income tax from such wages, as a result of the passage of Chapter 213 of 1961. The returns and payments will be due quarterly.

**Missouri** — Employers are required to withhold the state income tax from compensation paid to employees, effective July 1, 1961, as a result of the enactment of House Bill 30 of 1961. The returns and payments will be due quarterly.

**New Mexico** — The enactment of House Bill 19 of the 1961 Legislature establishes a system for withholding from wages paid to employees, to commence July 1, 1961. The returns and payments are due quarterly.

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**Massachusetts** — The 3% temporary additional tax on the net income of domestic and foreign business and manufacturing corporations, and the 20% temporary surtax of the corporation excise tax, heretofore imposed for the calendar year 1960 and the months of January and February, 1961, has been extended for the period March 1, 1961 through June 1963 by Chapter 139 of 1961.

**New Jersey** — Senate Bill 175 of 1961 postpones for one year the operation of the new property tax assessment procedure provided for by Chapter 51 of 1960. Therefore, tangible personal property used in business will first be assessed under Chapter 51 on January 1, 1962, the return of such property to be filed on May 1, 1962.

**New York** — Chapter 713 of the 1961 Legislature makes corporations previously classified as real estate companies subject to the franchise tax imposed upon business corporations by Article 9-A of the Tax Law, effective January 1, 1962.

**North Dakota** — The expiration date of the 2% North Dakota Retail Sales Tax has been extended from July 1, 1961 to July 1, 1963 by Senate Bill 108 of 1961.

**Nova Scotia** — The Nova Scotia sales tax rate has been increased, effective April 1, 1961, from 3% to 5%.

**Ontario** — Effective September 1, 1961, a 3% retail sales tax will be imposed, as a result of the enactment of Bill 107.

**Utah** — The rate of the Utah Sales and Use Tax has been increased from 2% to 2½%, effective July 1, 1961, due to the enactment of Senate Bill 85 of 1961.

**West Virginia** — House Bill 481 of 1961 has imposed a 1% use tax in addition to the regular 2% state use tax, effective March 10, 1961 through August 31, 1961.



## appealed to the supreme court

The following cases previously digested in *The Corporation Journal* have been appealed to The Supreme Court of the United States.\*

**ALASKA.** Docket No. 106. *Arctic Maid v. Territory of Alaska*, CCH ALASKA TAX REPORTS ¶200-034, 277 F. 2d 120. (The Corporation Journal, December 1960—January 1961, page 54; June—July 1961, page 114.) License tax—interstate commerce. Petition for writ of certiorari filed, May 27, 1960. Certiorari granted, October 10, 1960. (81 S. Ct. 45) May 1, 1961: "Judgment reversed and case remanded to the Court of Appeals for proceeding in conformity with the opinion of this court." (CCH ALASKA TAX REPORTS ¶200-057)

**ARIZONA.** Docket No. 168. *State Tax Commission v. The Murray Company of Texas, Inc.*, CCH ARIZONA TAX REPORTS ¶200-070, 350 P. 2d 674. (The Corporation Journal, December 1960—January 1961, page 54.) Privilege (sales) tax—interstate commerce. Petition or writ of certiorari filed, June 23, 1960. October 10, 1960: "Per Curiam: The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded for clarification." (81 S. Ct. 53) Opinion of the Arizona Supreme Court on remand reported at 89 Ariz. 61, 358 P. 2d 167. Petition for writ of certiorari filed, May 1, 1961; Docket No. 937.

**MINNESOTA.** Docket No. 931. *Dahlberg Co. v. Western Hearing Aid Center, Ltd.*, 107 N. W. 2d 381. (The Corporation Journal, June—July 1961, page 108.) Service on Secretary of State. Petition for writ of certiorari filed, April 27, 1961.

**NEW HAMPSHIRE.** Docket No. 755. *Benson v. Brattleboro Retreat*, CCH NEW HAMPSHIRE TAX REPORTS ¶200-026, 164 A. 2d 560. (The Corporation Journal, April—May 1961, page 89.) Service of process—doing business. Petition for writ of certiorari filed, February 20, 1961. Certiorari denied, April 3, 1961. (81 S. Ct. 905)

**NEW JERSEY.** Docket No. 203. *Eli Lilly and Company v. Sav-On-Drugs, Inc.*, CCH NEW JERSEY TAX REPORTS ¶200-146, 31 N. J. 591, 158 A. 2d 528. (The Corporation Journal, April—May 1960, page 329); affirming 57 N. J. Super. 291, 154 A. 2d 650. (The Corporation Journal, February—March 1960, page 308.) Doing business—enforcement of contracts. Appeal filed, June 20, 1960. Jurisdiction noted, October 17, 1960. (81 S. Ct. 102) The motion of the State of New Jersey to be named a party appellee is granted, February 20, 1961. (81 S. Ct. 689) Argued March 20 and March 21, 1961. Judgment affirmed, May 22, 1961. (See below.)

\* Data compiled from CCH U. S. SUPREME COURT BULLETIN.

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### ELI LILLY CASE AFFIRMED

The Supreme Court of the United States, on May 22, 1961, affirmed the decision of the New Jersey Supreme Court in the case of *Eli Lilly and Company v. Sav-On-Drugs, Inc.*, noted above. The high court held that the Lilly Company was doing intrastate business as well as interstate business in New Jersey and therefore could be required to qualify as a foreign corporation. A full discussion of the United States Supreme Court opinion will appear in the next issue of THE CORPORATION JOURNAL.



## regulations and rulings

**Arizona**—Since a grant or reservation of mineral rights constitutes a grant or reservation of an interest in land, these rights are taxable as real estate. (Opinion of the Attorney General, CCH ARIZONA TAX REPORTS ¶200-086)

**Georgia**—A foreign corporation engaged in the business of lending money secured by mortgages against property located in the state is not liable for Georgia income tax if its only activity in the state consists of sending or bringing the securing instrument into Georgia for incidental or recording purposes, since such activity is insufficient to constitute doing business for income tax purposes. (Opinion of the Attorney General, CCH GEORGIA TAX REPORTS ¶200-245)

A foreign corporation which maintains a bank account in a bank located in the state or makes an arrangement with such bank to receive collections from its customers and deposit those collections in its bank account and regularly engages in no other activity in the state is not liable for Georgia income tax, since such activity is insufficient to constitute doing business for income tax purposes. (Opinion of the Attorney General, CCH GEORGIA TAX REPORTS ¶200-246)

**Kentucky**—Income of nonresidents received from labor performed, business or other activities in the state, tangible personal property in the state and intangible property that has acquired a business situs within the state, is subject to Kentucky income tax. (Opinion of the Attorney General, CCH KENTUCKY TAX REPORTS ¶200-390)

**Louisiana**—An engineering firm which undertakes to supervise, superintend or direct in any manner construction projects of over \$30,000 is required to be licensed as a contractor. (Opinion of the Attorney General, CCH LOUISIANA TAX REPORTS ¶200-187)

**Tennessee**—The minimum franchise tax paid on the initial return may be deducted on the next return where the second return filed by the corporation covers a period of time less than twelve months since the date of incorporation, the corporation has elected the first privilege period of the taxes, and provided that the closing date of the second return is the first official closing of the corporation. (Letter from the Director of Franchise and Excise Tax Division, CCH TENNESSEE TAX REPORTS ¶200-037)

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### Discussions on Corporation Law

**Attaching and Levying on Corporate Shares**, by John P. Austin and David E. Nelson. 16 Business Lawyer, January, 1961, page 336.

**Incorporation Techniques: Planning Today for Tax Advantages Tomorrow**. Western Reserve Law Review, Volume 12, Number 2, March, 1961, page 182.

**Multiple Votes Per Share**, by Frank L. Seamans and Carl F. Barger. 16 Business Lawyer, January, 1961, page 400.



## some important matters

*For June and July*

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**Alabama**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Alaska**—Returns of Tax Withheld at the Source due on or before July 31.—Domestic and Foreign Corporations.

**Arizona**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Arkansas**—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

**California**—Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Colorado**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Connecticut**—Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Delaware**—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Withholding at Source Returns due on or before July 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.  
Annual Report on or before June 30.—Foreign Corporations.

**District of Columbia**—Returns of tax Withheld at the Source on or before July 31.—Domestic and Foreign Corporations.

**Dominion of Canada**—Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

**Florida**—Annual Report and Capital Stock Tax due on or before July 1.—Domestic and Foreign Corporations.

**Hawaii**—Annual License Fee on or before July 1.—Foreign Corporations.

**Idaho**—Annual Statement and License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

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**Illinois**—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

**Indiana**—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Iowa**—Annual Corporation Report due between July 1 and August 1.—Domestic Corporations not organized under and *not* adopting the Corporation Act of 1959.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

**Kentucky**—Statement of Existence and Verification of Process Agent due in June—Foreign Corporations.

Verification Report as to process agent due in June—Domestic Corporations.

Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Maine**—Franchise Tax Return due on or before June 1.—Domestic Corporations.

**Maryland**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Michigan**—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

**Mississippi**—Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing five or more persons in Mississippi.

**Missouri**—Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

**Montana**—Annual License Tax due on or before June 15.—Domestic and Foreign Corporations.

**Nebraska**—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic and Foreign Corporations.

**Nevada**—Annual List of Officers, Directors and Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

**New York**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

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**North Carolina**—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

**North Dakota**—Corporation Report due on or before August 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Ohio**—Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

**Oklahoma**—Annual Capital Stock Affidavit due during July.—Foreign Corporations.

Annual Franchise Tax Return and Payment due between July 1 and August 31.—Domestic and Foreign Corporations.

**Oregon**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**South Dakota**—Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

**Tennessee**—Annual Privilege (Franchise) Tax Return and Payment; Annual Report and Tax and Excise Tax Report and Tax; Reports of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

**United States**—Second Installment of Income Tax due June 15.—Domestic and Foreign Corporations having offices or places of business in the United States.

**Utah**—Quarterly Retail Sales Tax Returns and Payments due on or before July 30.—Domestic and Foreign Corporations.

**Vermont**—Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

**Washington**—License Fee due on or before July 1.—Domestic and Foreign Corporations.

**West Virginia**—License Tax Statement due on or before July 1.—Domestic Corporations.

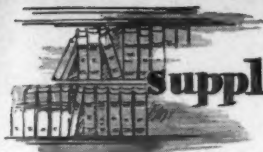
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief work was located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

**Wisconsin**—Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

**Wyoming**—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



## supplementary literature

*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.*

**Heads I Win, Tails You Lose.** An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

**Spot Stocks Mean More Sales.** A review of the advantages and dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

**Agent for Process.** Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

**Corporate Confusion.** A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

**A Pretty Penny . . . Gone!** What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

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